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Supreme Court of the United States

1969 TERM.

[redacted]

JAMES H. MORRISON,

Petitioner,

versus

JOHN R. RARICK,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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SUPREME COURT OF THE UNITED STATES

1969 TERM.

No. 49,466.

JAMES H. MORRISON,
Petitioner,

versus

JOHN R. RARICK,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

TO THE HONORABLES, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of James H. Morrison, with respect shows unto the Honorable Court as follows:

I.

CITATION TO OFFICIAL REPORT OF OPINION DELIVERED IN THE COURTS BELOW.

The opinion rendered by the Court below is reported in 214 So.2d 545 (1968).

II.

GROUNDS FOR THE COURT'S JURISDICTION.

The decree sought to be reviewed was rendered on October 9, 1968 (p. 28). The time for filing this petition is January 7, 1969. The jurisdiction of the Honorable Court is invoked under Article III, Section 2, the First and Fourteenth Amendments of the Constitution of the United States.

III.

QUESTIONS PRESENTED FOR REVIEW.

1. Were certain statements in printed form attributed to have been made, by Petitioner, (Appellant) James H. Morrison, and John Doe in a Congressional campaign against his opponent, the respondent, that he was a member of the Ku Klux Klan, made with actual malice, i.e., with knowledge, that they were false or in reckless disregard of whether they were false or true, so as to allow recovery by this candidate, for office, in a civil action for libel and slander?

2. Were statements that respondent (appellee herein) who at the time was a candidate for office, was a member of the Ku Klux Klan, libelous, slanderous, and made with actual malice, so as to allow recovery by this candidate for office in a civil action for libel and slander?

3. Is respondent's (appellee herein) petition which alleges "that petitioner (appellant herein) acting in a conspiracy with John Doe and certain other defendants unknown to respondent (appellee herein) caused to be published and did publish and distribute a four page newspaper which contained material which is false, untrue and maliciously libelous as to plaintiff, who then was a candidate in an election for U. S. Representative to Congress, and that same was done with actual malice and with full knowledge, that said material was false or alternatively with reckless disregard as to whether it was false or not and that said material was published to injure, harm and embarrass plaintiff personally," . . . sufficient to state a *cause of action* under the "with actual malice" doctrine of the U. S. Supreme Court?

4. Where respondent (appellee) in answer to interrogatories states that damages to him are speculative and where his United States income tax returns for the following year of 1967 reveal that his income was almost twice that of the year of 1966 when he filed this suit and alleged he was libeled and slandered in 1966, is this sufficient to state a *right* of *action* in such a civil suit?

IV.

CONSTITUTIONAL PROVISIONS INVOLVED.

a. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exer-

cise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances." United States Constitution, First Amendment.

b. ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. . . ." United States Constitution, Fourteenth Amendment, Section 1.

MAY IT PLEASE THE COURT:

V.

STATEMENT OF THE CASE.

This matter involves a suit for damages, filed on August 10, 1966, by John R. Rarick (respondent herein) against James H. Morrison (appellant herein) and John Doe and other unknown defendants for Five Hundred Thousand Dollars ($500,000.00), who at the time the alleged incidents occurred, was a qualified candidate in an election for the United States House of Representatives from the 6th Congressional District, State of Louisiana.

In his original petition, respondent charges that during this political campaign petitioner, also a candidate, being the incumbent Member of Congress, did along with defendant, "John Doe", and certain other unknown defendants act in a conspiracy with them, and further alleges that they did cause to be published a four-page paper which is alleged to have contained a large amount

of material which respondent contends is totally false, untrue, and maliciously libelous, and alternatively alleging that said material was published with reckless disregard of whether it was false or not and charging that your petitioner and the other defendants caused said material to be published with the specific intention to injure, harm and embarrass respondent personally; said material stating that respondent was a member of the Ku Klux Klan, and as such was an unfit and unworthy person by virtue of said membership.

Petitioner, James H. Morrison, in answer to respondent's interrogatories, denied these allegations (p. 42) and filed a peremptory exception of no cause or right of action. (p. 15.)

Judgment was rendered in the district court overruling and dismissing said exception. Judgment (p. 17) and reasons (p. 19).

Application was made for writs of certiorari to the Louisiana Court of Appeals, First Circuit. This ruling of this Court was, "Writs refused". (p. 27.)

Application was then made to the Louisiana Supreme Court for writs of certiorari. The Louisiana Supreme Court on October 9, 1968, rendered the following decision, "The ruling of the trial court is correct." (p. 28.) Petitioner (appellant) now petitions to this Court for a writ of certiorari.

The question presented in this request for a writ of certiorari is whether the printed remarks and statements allegedly made by petitioner, James H. Morri-

son, were made with actual malice, that is, they were made with knowledge of falsity or in reckless disregard of whether they were true or false?

Respondent alleges that these statements to have been made by petitioner, were made with actual malice or with reckless disregard of whether they were true or false. It is respectfully submitted that these statements were not made maliciously and regardless of who made them, that under the candidate and public official doctrine and rule of the *New York Times v. Sullivan,* 376 U.S. 254; 84 S.Ct. 710; 11 L.Ed.2d 686 (1964) case, the First and Fourteenth Amendments *do* guarantee the protection and privilege of free speech.

Free expression of opinion by its very nature is believed to be true by the expressor. One might be held for libel for wanton disregard for truth, but not for mistaken opinion.

In the *New York Times* case *(supra),* statements made or printed even though erroneous, honestly made, about a public official, are protected under the First and Fourteenth Amendments from civil liability.

Actual malice according to the doctrine of the *New York Times (supra)* case, cannot be presumed, and must be set out by most convincing clarity.

The constitutional safeguards of freedom of speech were offered as a defense in the recent decision, *New York Times Co. v. Sullivan (supra).*

Petitioner urges that the actual malice rule of this *New York Times* case *(supra)* applies herein.

VI.

ARGUMENT.

It is undisputed that respondent John R. Rarick was a duly qualified candidate for the U. S. Congress and therefore this case falls under the aegis of the New York Times rule of libel.

Petitioner submits that *all* of the *Louisiana* cases *with Louisiana citations, cited by the Trial Judge,* in his written reasons for judgment, (p. 19), *were prior* to the extension of the libel and slander doctrines established by the U. S. Supreme Court and extended even further in the Louisiana case of *Thompson v. St. Amant,* 390 U.S. 727, 20 L.Ed.2d 262, 88 Sup.Ct. 1323, decided by the U. S. Supreme Court, *April 29, 1968.*

Likewise, the District Judge cites *Belli v. Orlando Daily Newspaper, et al.,* 389 Fed.2d 579. This was not a decision by the United States Supreme Court but was a decision of the United States Circuit Court of Appeal and was decided in 1967 which was prior to the *Thompson v. St. Amant (supra)* case. Without question, the doctrine of *all of these libel and slander cases,* established by all of these United States Su-

preme Court libel and slander decisions, especially in the *New York Times* case, *(supra)*, and in the *Thompson v. St. Amant* case, *(supra)*, rule out the actual malice exception. Actual malice according to this doctrine cannot be presumed, and must be set out by most convincing clarity. This doctrine even holds that the inability to prove the truth of a defamatory statement does not in itself establish actual malice.

In a case, decided in California, *Noonan v. Rousselot*, 48 California Reporter 817, (1966) the facts are somewhat similar, the Court held:

> "That allegations that defendants acted wickedly and maliciously, that tabloid was distributed by them for express purpose of injuring plaintiff and causing his defeat in primary election and that alleged libels were false, malicious and unprivileged and were calculated to and did expose plaintiff to hatred, contempt, ridicule and obloquy, causing him to be shunned and avoided failed to allege actual malice thereby rendering counts for conspiracy and libel insufficient."

In this case, unlike the present case, Noonan, the plaintiff and candidate lost the election to the defendant, Congressman Rousselot who was reelected.

In the *Noonan* case, the trial court sustained defendant's demurrer which is similar to Louisiana's exceptions of no cause or right of action. The appellate court affirmed the lower court's decision.

The Court in the *Noonan* case said under paragraph 6, page 821 of 49 California Reporter:

> "We hold therefore that unless defendants acted with malice, as defined in the *New York Times Co. v. Sullivan (supra)*, plaintiff does not have a cause of action."

In the *Noonan v. Rousselot* case, *(supra)*, the plaintiff alleges practically the same allegations of malice as respondent does in the case at bar, and actually goes even further in the allegations of malice.

In the *Noonan* case, the plaintiff alleged:

> " 'The tabloid was distributed for the express purpose of injuring plaintiff and causing his defeat' and that the alleged libels were 'false, malicious and unprivileged and were calculated to and did expose the plaintiff to hatred, contempt, ridicule and obloquy, causing him to be shunned and avoided.' Also the charge of 'malice, oppression and fraud', also the allegation that defendants 'did not act in good faith but for the sole purpose of arousing hatred and ill will against the plaintiff and to deprive him of his constitutional right to seek public office in a free and fair election'."

With all of these allegations set forth above the court held that they, (the pleadings) did not constitute *malice* as set forth in the *New York Times Co. v.*

Sullivan case, *(supra)*. Like in the case at bar, plaintiff Noonan alleged a conspiracy. Certainly, if these allegations did not set forth the actual malice doctrine of the *New York Times Co. v. Sullivan* case, *(supra)*, then the like or similar allegations in the case at bar certainly do *not either*.

Petitioner would like to point out that in the respondent's petition he bases his entire claim of libel on two publications: One as set forth in allegations No. 4 and No. 6, (Record p. 6) and the other in allegations No. 7 (Record p. 7). Also attached to the respondent's petition were 7 interrogatories for the defendant (petitioner herein) to answer (Record p. 12). The petitioner has answered these interrogatories (Record p. 31), and by these answers (p. 42) petitioner has eliminated any responsibility for respondent's alleged claim of libel and slander.

The wording of the respondent's petition (p. 29) makes it clear that there is absolutely no showing of malice or that the petitioner acted with a reckless disregard of whether the alleged material was false or not. There are absolutely no facts in respondent's petition to support these ultimate conclusions. According to respondent's petition as applied to the doctrine of the *New York Times Co. v. Sullivan* case, *(supra)*, there was no cause or right of action alleged or stated.

Additionally, it is submitted that even if the petition stated a cause of action, respondent has no right

of action. In paragraph fourteen of his petition, respondent alleges damage to his earning potential and public stature. Since respondent won the election how can he be damaged? Clearly the respondent enjoys more public stature today than he did when he was a candidate for Congress. He is now one of a very select few, a United States Congressman. The Court will also recognize that the compensation and emoluments of the office of a Congressman are far greater than that enjoyed by respondent prior to the time of the alleged slander. Above and beyond all of this, the respondent has admitted in his deposition, (Record p. 51) that any damage he might have sustained "would only be speculative," and that he couldn't "put it down in dollars and cents." Therefore, it is respectfully submitted that even if the petition states a legal cause of action, the respondent has no right of action, for by his own admission he has suffered no ascertainable damage. In fact, his financial situation, as a result of the political campaign, wherein the alleged wrongful conduct of libel and slander occurred has been significantly improved.

In answer to the interrogatories requested by petitioner, (p. 44) respondent gave the following information for his total income of 1966 and 1967 by filing copies of his 1966 and 1967 income tax return showing the following: (Record pp. 143 and 153.)

> "Plaintiff's total income for 1966—$13,886.77." (p. 48.)

"Plaintiff's total income for 1967—$27,333.33." (p. 49.)

Respondent's petition alleged that the libel occurred in *August, 1966* (Record p. 6). How could respondent have suffered any financial damages or loss, if according to his own admission, by his 1966 income tax return, he reported a total income for *1966* of $13,886.77, whereas in *1967*, he reported (by his 1967 income tax return) almost *twice* that amount, the sum of $27,333.33? The answer is clear that he *not* only did *not* suffer any damages, but reported almost *twice* as much income in the following year of 1967.

WHEREFORE, petitioner respectfully prays that this petition be granted and that a writ of certiorari issue, directed to the Supreme Court for the State of Louisiana, the First Circuit Court of Appeals of the State of Louisiana and the 20th Judicial District Court of Louisiana, commanding these Courts to certify and send to this Honorable Court, for its review and determination, a full and complete transcript and record of all proceedings on the cause entitled "John R. Rarick versus James H. Morrison" and reverse title, bearing Number 49,466 on the docket of the Supreme Court for the State of Louisiana, to the end that the judgment and opinion of said Court may be reversed by this Honorable Court.

Petitioner further prays for such other and further relief in the premises as this Court may deem proper and just.

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CERTIFICATE.

I, the undersigned, counsel for petitioner, hereby certify that I have served a copy of the foregoing petition upon Jack Rogers, Attorney for respondent, at Suite 840, Commerce Building, Baton Rouge, Louisiana, by mailing a copy thereof, postage prepaid, to him at said address.

.....

BASCOM D. TALLEY, JR.,
Attorney for Petitioner.